IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-12-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.Nos.38756 to 38758 of 2004
and
WPMP Nos.2697 to 2699 of 2007

Om Prakash .. Petitioner in WP 38756/2004

Mohan Kumar Patil .. Petitioner in WP 38757/2004

G.M.Patil .. Petitioner in WP 38758/2004

vs

1.The Government of Tamil Nadu
Rep. By its Secretary
Revenue Department
Fort St. George, Chennai 600 009.
2.The Special Commissioner &
Commissioner
Land Reforms
Chepauk, Chennai 600 005.
3.The Assistant Commissioner/
Competent Authority
Urban Land Ceiling
Poonamallee, Chennai 600 029. .. Respondents

Writ petitions filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the entire records connected with the order passed by the third respondent under Section 9(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act 24 of 1978 in Na.Ka.5896/85/C dated 31.10.1994 and the consequential notice dated 11.9.1996 issued under Section 11(5) of the said Act in respect of the land measuring 33 cents comprised in S.Nos.224/2 and 224/3 vide Patta Nos.685 and 686 respectively situate in No.64 Ayyambakkam Village, Saidapet Taluk, Chingleput District,(WP No.38756 & 38757/2004) and 33 cents comprised in S.No.224/4 vide Patta No.684 situate in No.68 Ayyambakkam Village, Saidapet Taluk, Chingelput District, (WP 38758/2004) and quash the same and further direct the respondents to treat the proceedings as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 20/99.

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For Petitioners : Mr.D.Rajendran
for Mr.A.Gandhi

For Respondents : Mr.S.Gopinathan
Additional Government
Pleader

COMMON ORDER

This order shall govern the above three writ petitions.

2.The affidavits in support of the petitions and the counter affidavit are perused. The Court heard the learned Counsel on either side.

3.The petitioners in all these three writ petitions have sought for a writ of certiorarified mandamus to quash the order passed by the third respondent under Section 9(5) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act 24 of 1978 in Na.Ka.5896/85/C dated 31.10.1994, and the consequential notice dated 11.9.1996, issued under Section 11(5) of the said Act and to direct the respondents to treat the proceedings as abated under Section 4 of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act 20/99.

4.The case of the petitioners in short is that the land in Survey No.224 in Ayyambakkam Village, originally belonged to one Chandra Pillai; that these petitioners by way of three sale deeds dated 30.1.1992, have purchased 34 cents, 33 cents and 33 cents respectively and took possession of the property; that they were making payment of kist, and thus, the property came to their possession; that they paid kist upto the Fasli year 1405; that when they attempted to make payment of kist for the Fasli year 1406, the Village Administrative Officer refused to receive; that when the petitioners made enquiry, they came to know that the proceedings were initiated, and the Government is to acquire the land in Survey No.224 under Act 24/78; that thereafter, they preferred appeals before the second respondent; but, the second respondent returned the appeals with the endorsement on 3.12.2004, stating that Act 24/78 was repealed by the Act 20/99, and the appeals under Sec.33 have become abated, and the appellate authority has become functus officio; that the petitioners were kept in darkness as to the proceedings initiated by the third respondent under Act 24/78; and that under such circumstances, finding no other alternative remedy, the petitioners were compelled to file these writ petitions to quash the impugned order.

5.In support of these writ petitions, the learned Counsel Mr.D.Rajendran, would submit that in the instant case, the properties were purchased by the petitioners in the year 1992, by three sale deeds from the original owner Chandra Pillai; that they have taken possession also; that Chandra Pillai was divested the ownership; that the petitioners have become owners; that they have been in continuous possession all along; that while the matter stood thus, the notices

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contemplated under Sections 8, 9(4), 5 and 11(4) of the Act were issued, and they were all taken against the vendor Chandra Pillai; that no one notice was taken against the petitioners, and thus, it would be violative of the principles of natural justice; that the petitioners were kept in darkness; and that after the petitioners have become owners of the property, no question of initiation of the proceedings under the Tamil Nadu Urban Land (Ceiling & Regulation) Act and also issuing notice to the erstwhile owner to acquire the property would arise.

6.Added further, the learned Counsel that in the instant case, the petitioners have taken possession in 1992; that they have been in continuous possession of the property; that neither the notice was served upon them as contemplated under Sec.11(5) of the Act, nor they have surrendered possession of the property, nor was it forcibly taken by the Government; that under the circumstances, once no notice has been served upon them, there is no question of vesting of the property; that in view of the non-compliance of Sec.11(5), the authority cannot proceed against the property or state that they have taken possession of the property; that under the circumstances, all these proceedings have become abated, and hence, those orders have got to be quashed.

7.The learned Counsel for the petitioners in support of his contentions, relied on a decision of a Division Bench of this Court reported in 2007-2-L.W. 109 (V.SOMASUNDARAM AND OTHERS V. THE SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT AND OTHERS).

8.In answer to the above, the learned Additional Government Pleader would submit that the acquisition proceedings were initiated under the provisions of the said Act in the year 1988 itself; that under such circumstances, the notices were actually issued to the erstwhile owner as contemplated under the provisions of law; that even according to the petitioners, they have purchased the properties in the year 1992, and thus, even at the time of the initiation of the proceedings, they were not the owners of the property; that under the circumstances, the first contention that the notice has not been served upon the petitioners who are the owners, under Sections 8, 9(4) and 5 has got to be discountenanced; that as far as the question of taking possession was concerned, even assuming that the property was actually taken possession by the petitioners, and they continued to be so, they have got to be construed only as encroachers; that under the circumstances, the writ petitions do not carry merit; that they cannot claim any benefit under the Act, and hence, the writ petitions have got to be dismissed.

9.The Court paid its anxious consideration on the submissions made.

10.In the instant case, it is not in controversy that the proceedings were initiated in the year 1988. At the time when Chandra Pillai was the owner, the proceedings were actually initiated, and notices under Sections 8, 9(4) and 5 were served upon him. Admittedly, the petitioners have purchased the properties by way of three sale deeds in the year 1992, and hence, the first contention that pending

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the acquisition proceedings, the petitioners, who are the real owners, were not served with the notices cannot be countenanced in law.

11.As far as the second contention of the petitioners' side was concerned, this Court is able to see sufficient force. In the instant case, the petitioners have taken possession of the property from the owner on and pursuant to the sale deeds dated 30.1.1992, and thus, they have been in possession continuously. They have made payment of kist also till the Fasli year 1405, and thereafter, though tendered, it was refused. Once the Revenue has received the kist till Fasli year 1405, their ownership has been recognised from the date of the sale i.e., 30.1.1992. As far as the delivery of possession was concerned, there should have been either surrender of possession or the possession should have been taken by the Government. In the case on hand, it is an admitted position that the notice under Sec.11(5) of the Act was actually issued to the erstwhile owner, who was not the real owner on the day when the possession, according to the State, was taken. On the contrary, there is evidence to show that the possession was continued to be with the petitioners. Now, the contention put forth by the learned Additional Government Pleader that even though possession was not taken, and they should be construed only as encroachers cannot be accepted. At this juncture, it would be more apt and appropriate to reproduce the relevant portion of the decision relied on by the learned Counsel for the petitioners and reported in 2007-2-L.W. 109 (V.SOMASUNDARAM AND OTHERS V. THE SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT AND OTHERS) as follows:

> "9.From the perusal of the file it is clear that proceedings were initiated against the third respondent, who is the erstwhile owner of the lands in question, in respect of transfer of his land to the appellants herein. Section 11(5) notice was also issued to the third respondent, who was not the real owner. As per section 11(5) of the Act, the competent authority is bound to issue notice in writing to any person, who may be in possession of the land, to surrender and deliver possession thereof, to the State Government or to any person duly authorised by the State Government, within thirty days time. No notice having been issued against the appellants, who are in possession of the lands as stated supra, taking possession of lands on 30.4.1999 by the second respondent is non-est. It is to be noted that due to the repealing of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, with effect from 16.9.1999, it is not open to the authorities to proceed against the appellants at this stage to rectify the non-compliance of section 11(5) of the Act."

12.Applying the above ratio, in the case on hand, it would be quite clear that the notice under Sec.11(5) of the Act was issued to the erstwhile owner, but not to the petitioners who are the real owners at the time of taking of possession. The possession was never handed over and the petitioners continued to be in possession. The notice was not given to the petitioners who are the real owners, but to the erstwhile owner, which would not be binding on the petitioners, and as

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such, there is no delivery of possession. Hence, no question of vesting would arise. Applying the said ratio, this Court is of the considered opinion that it is a case where the proceedings got to be taken as abated. Accordingly, the impugned orders are quashed, and these writ petitions are allowed. No costs. Consequently, connected WPMPs are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nsv/

To:

1.The Secretary
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Revenue Department
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Chepauk, Chennai 600 005.

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Competent Authority
Urban Land Ceiling
Poonamallee, Chennai 600 029.

+1cc to Mr.A.Gandhi, Advocate Sr 73824
+3ccs to Govt. Pleader Sr 73293,73294 and 73296

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km/20.12.

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